



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : LON/00AX/LDC/2016/0003

Property : 9 Kingston Hill, Kingston upon
Thames, KT2 7NH

Applicant : Orchidbase Ltd (managing agent
Michael Richards and Co)

Respondents : Nadifa Mohamed
P and E Tsarpali
M Macleod
H Davies
C Bond

Type of Application : Dispensation from consultation
requirements under Landlord and
Tenant Act 1985 section 20ZA

Tribunal Members : Judge Richard Percival

Venue of Deliberations : 10 Alfred Place, London WC1E 7LR

Date of Decision : 15 February 2016

DECISION

Decisions of the tribunal

- (1) The Tribunal pursuant to section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") grants dispensation from the consultation requirements in respect of the works the subject of the application.

Procedural

1. The applicant landlord applies for a dispensation from the consultation requirements in section 20 of the Landlord and Tenant Act 1985 and the regulations thereunder in respect of the insurance excess in respect of works to remedy subsidence. The application was allocated to the paper track.
2. The Tribunal gave directions on 11 January 2016, which provided for a form to be distributed to the tenants to allow them to object to or agree with the application, and, if objecting, to provide such further material as they sought to rely on. The deadline for return of the forms was 22 January 2016. No forms have been received.

The property and the works

3. The property is a Victorian or Edwardian house converted into five flats, over three floors. It is situated in a conservation area.
4. It appears that subsidence caused by tree roots has affected the building. Mitigation of the cause of the damage has been accomplished with the removal of a number of trees, and the current application relates to the cost of remedial work to the property. Damage caused by structural movement appears to affect two of the flats and the exterior.
5. The work concerned is covered by the building insurance, and a contractor has been appointed by the insurer to undertake work estimated at £19,080 plus VAT. However, the excess on the insurance policy is £2,500. It is this sum in respect of which the landlord seeks dispensation.

Determination

6. The applicant has provided a detailed schedule of works to flats 2 and 4, which are significant, and further works to the exterior of the property. However, the material does not (except perhaps, by inference) indicate how severe the damage is with which the tenants are living, nor the urgency of repair.

7. However, on the assumption that the works are necessary at all, it is not conceivable that a quotation could be obtained for the works that would be less than the excess on the insurance policy. In these circumstances (and I repeat, on the assumption that the work is indeed necessary), consultation would serve no possible useful purpose.
8. Furthermore, the directions in this case expressly provided that the absence of objection by the tenants would be taken to indicate agreement with the application. I therefore treat it as uncontested.
9. I remind myself that the sole issue for my determination is whether it is reasonable to dispense with the consultation requirements imposed by section 20 of the 1985 Act. In my judgment, the circumstances outlined above are such that dispensation should be granted.
10. It remains open to the tenants to challenge the cost of the works, if they consider them unreasonably incurred, or likewise the quality of the workmanship, under section 27A of the 1985 Act.

Name: Judge Richard Percival **Date:** 15 February 2016

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in

accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20ZA

- (1) Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
- (2) In section 20 and this section—
 - “qualifying works” means works on a building or any other premises, and
 - “qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
 - (a) if it is an agreement of a description prescribed by the regulations, or
 - (b) in any circumstances so prescribed.
- (4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
 - (a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,
 - (b) to obtain estimates for proposed works or agreements,
 - (c) to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,
 - (d) to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and
 - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
- (6) Regulations under section 20 or this section—
 - (a) may make provision generally or only in relation to specific cases, and
 - (b) may make different provision for different purposes.
- (7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.